

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1247

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

77-1249, 1252, 1253

-----X
UNITED STATES OF AMERICA,

Appellee,

-v-

BARTHOLOMEW BUIGUES,

Defendant-Appellant.
-----X

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

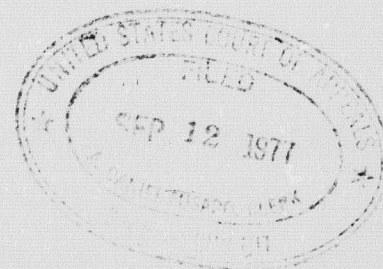
SOUTHERN DISTRICT OF NEW YORK

APPENDIX FOR DEFENDANT-APPELLANT

BARTHOLOMEW BUIGUES

ERNEST H. HAMMER, ESQ.
Attorney for defendant-appellant
60 East 42nd Street
New York, New York 10017

TO: ROBERT P. FISKE, ESQ.
United States Attorney
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007



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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

77-1249, 1252, 1253

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UNITED STATES OF AMERICA, :
Appellee, :
-v- :
BARTHOLOMEW BUIGUES, :
Defendant-Appellant. :
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Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

BARTHOLOMEW BUIQUES,
ANGELO PUIG, IRMA ANES
SUSAN HOROWITZ, and JOHN BARTOLOMEU,

Defendants.

INDICTMENT

76 Cr.

76 PREL 0864

The Grand Jury charges:

INTRODUCTION

1. In enacting Title 42, United States Code, Section 1751 et seq., The National School Lunch Act, the Congress of the United States empowered the United States Department of Agriculture to provide food to children participating in non-profit school lunch programs.

2. Pursuant to Title 42, United States Code, Section 1761, the United States Department of Agriculture is further empowered to administer Special Summer Food Service Programs for Children, which programs were intended to provide food during the summer to children from areas in which poor economic conditions exist.

3. During July and August, 1975, the Special Summer Food Services Program in New York State was administered by the Food and Nutrition Service of the United States Department of Agriculture. The Food and Nutrition Service would and did enter into agreements with private, non-profit organizations, designated as service institutions under the National School Lunch Act, that undertook to operate food service programs for needy children with funds provided from the United States.

4. At all times relevant herein, Youth In Government was a non-profit corporation duly organized and existing under the laws of the State of New York, with its principal office at 2176 Amsterdam Avenue, New York, New York.

5. At all times relevant herein, BARTHOLOMEW PUIGUES, the defendant, was chairman of the board of Youth In Government.

6. In July and August, 1975, Youth In Government, pursuant to agreement with the Food and Nutrition Service of the United States Department of Agriculture, operated a Special Summer Food Service Program for Children in the Borough of Manhattan in New York City.

7. During July and August, 1975, ANGELO PUIG, the defendant, was employed as the director of the Special Summer Food Service Program of Youth In Government.

8. During July and August, 1975, IRMA ANES, the defendant, was listed on the books of Youth In Government as its "administrative chief."

9. During July and August, 1975, SUSAN HOROWITZ and JOHN SAMMARCO, the defendants, were listed on the books of Youth In Government as "site monitors".

COUNT ONE

10. From on or about the 1st day of November, 1974, up to and including the 1st day of January, 1976, in the Southern District of New York and elsewhere, BARTHOLOMEW PUIGUES, ANGELO PUIG, IRMA ANES, SUSAN HOROWITZ, and JOHN SAMMARCO, the defendants, unlawfully,

(a) In June, 1975, BARTHOLOMEW BUIGUES, the defendant, would and did hire IRMA ANES, the defendant, as "administrative chief" of Youth In Government's Special Summer Food Services Program at a salary of \$200 per week.

(b) In June, 1975, BARTHOLOMEW BUIGUES, the defendant, would and did hire SUSAN HOROWITZ and JOHN SAMMARCO, the defendants, as "site monitors" of Youth In Government's Special Summer Food Services Program at salaries of \$110 per week.

(c) While supposedly working as "administrative chief" of the Special Summer Food Services Program, IRMA ANES, the defendant, would and did work full time at Querer, Inc., a day care center located at 391 East 149th Street, Bronx, New York.

(d) While supposedly working as a "site monitor" of the Special Summer Food Services Program, SUSAN HOROWITZ, the defendant, would and did work full time at Arawak Consulting Corporation, 210 East 86th Street, New York, New York at an annual salary of \$12,000 per year.

(e) Although listed as employees of Youth In Government, JOHN SAMMARCO, IRMA ANES and SUSAN HOROWITZ, the defendants, would and did fail to report regularly at their jobs in the Special Summer Food Services Program.

(f) In July and August, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, although aware that JOHN SAMMARCO, IRMA ANES, and SUSAN HOROWITZ, the defendants, were not working regularly in the Special Summer Food Services Program, would and did cause salary checks to be issued weekly to these individuals.

(a) In July and August, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, would and did cause a payroll record book to be kept listing the wages and hours of the employees of the Special Summer Food Services Program, in which book it was recorded that JOHN SAMMARCO, LINA ANES, and SUSAN HOROWITZ each worked seven hours per day, five days per week, for the duration of the Special Summer Food Services Program.

(b) In August, 1975, Youth In Government would and did file claims with the United States Department of Agriculture for expenses incurred in operating its Special Summer Food Services Program, which expenses included the salaries of employees.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York:

1. In or about January, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, held a meeting at 1920 McGraw Avenue, Bronx, New York, to organize the Special Summer Food Services Program for Youth In Government.

2. In or about May, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, held a meeting at The Latin Beat, 508 Van Nest Avenue, Bronx, New York, to organize further the Special Summer Food Services Program for Youth In Government.

3. On or about the 27th day of June, 1975, SUSAN HOROWITZ filled out an application for employment in the Special Summer Food Services Program of Youth In Government.

4. From on or about the 7th day of July, 1975, and continuously thereafter up to and including the 16th day of April, 1976, SUSAN HOROWITZ, the defendant, was employed as a staff associate at Arawak Consulting Corporation, 210 East 86th Street, New York, N.Y.

5. During July and August, 1975, IRMA ANES, the defendant, was employed as a bookkeeper and administrative assistant at Querer, Inc., 391 East 149th Street, Bronx, New York.

6. During July and August, 1975, BARTHOLOMEW BUIGUES and ANGELO PUIG, the defendants, wrote weekly salary checks to IRMA ANES, JOHN SANMARCO, and SUSAN HOROWITZ.

7. In July and August, 1975, IRMA ANES, the defendant, made entries in the payroll book of Youth In Government which stated that IRMA ANES, SUSAN HOROWITZ, and JOHN SANMARCO had each worked seven hours per day, five days per week, for eight consecutive weeks.

8. On or about the 22nd day of August, 1975, IRMA ANES, the defendant, filed with the United States Department of Agriculture a Food and Nutrition Service Reimbursement Voucher for the Special Summer Food Service Program of Youth In Government for July, 1975.

9. On or about the 29th day of August, 1975, IRMA ANES, the defendant, filed with the United States Department of Agriculture a Food and Nutrition Service Reimbursement Voucher for the Special Summer Food Service Program of Youth In Government for August, 1975.

10. In or about August, 1975, Youth In Government received from the United States Department of Agriculture \$142,747 in payment of its claim for the expenses of the Special Summer Food Services Program for July, 1975.

(Title 18, United States Code, Section 371.)

COUNTS TWO AND THREE

The Grand Jury further charges:

1. Each and every allegation of the Introduction of this Indictment is hereby repeated, realleged, and incorporated by reference in each of Counts Two and Three of this Indictment as though fully set forth therein.

2. On or about the dates hereinafter set forth, in the Southern District of New York, BARTHOLOMEW BUIGUES, ANGELO PUIG, IRMA ANES, SUSAN HOROWITZ, and JOHN SAMMARCO, the defendants, unlawfully, wilfully, and knowingly would and did make and present and cause to be made and presented to the United States Department of Agriculture, a department and agency of the United States, claims upon and against the United States, to wit, Food and Nutrition Service Reimbursement Vouchers, knowing such claims to be false, fictitious, and fraudulent:

<u>COUNT</u>	<u>DATE</u>	<u>MONTH COVERED BY VOUCHER</u>
2	August 22, 1975	July, 1975
3	August 29, 1975	August, 1975

(Title 18, United States Code, Sections 287 and 2.)

Joseph J. Delaney
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

76 CM 0864

Form No. USA-216 (Rev. 9-23-56)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

BARTHOLOMEW BUIGUES,
ANGELO PUIG, IRMA ANES,
SUSAN HOLONWITZ, and JOHN SAMMARCO,

Defendants.

INDICTMENT

76 Cr.

(18 U.S.C. §§ 371, 287 and 2.)

ROBERT B. FISKE, JR.

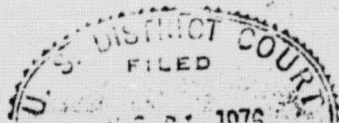
United States Attorney.

A TRUE BILL

Joseph Feldman

Foreman.

FPI-58-1-13-70-20M-4925



JUDGE POLI

8-31-76 In

9-9-76 - L

(Atty: Im

GUILTY.

pleads

pleads

(Atty: Br

Ordered

(Atty: W.

Ordered

all purp

ACK

Det. Bartholomew Buiques

Det. H. Hammer) pleads N.I.

Det. Ordinal F/P.

Det. Angela Pung (at)

NOT GUILTY Ordinal F/P.

Det. Irma (at)

NOT GUILTY Ordinal F/P.

Det. Susan Horowitz

Det. (at) pleads NOT GUILTY

F/P. ROK.

Det. John Ammarco

Paul Flynn) pleads NOT GUILTY

F/P. ROK.

Assigned Pollack, J

Assign

U.S. District Court
U.S. MAGISTRATE Assigned U.S. vs. **BUIGUES, BARTHOLOMEW**

0848
18:371
18:287

0208 1
U.S. TITLE SECTION

OFFENSES CHARGED
**Consp. to commit offenses against U.S.
False claims against U.S. Agency.**

ORIGINAL COUNTS
1
2, 3

11/12

II. KEY DATES & INTERVALS

ARREST	INDICTMENT	ARRAIGNMENT	TRIAL
U.S. Custody Rec'd 8-31-76	High Risk Date Information 8-31-76	Trial Set For 9-9-76	Verdict Due
Summons Served	Indict. Waived	1st Plea 9-9-76	Trial Began
First Appearance	In Charging District	Final Plea	Trial Ended

SENTENCE
Disposition of Charges
☐ Convicted ☐ On All Charges
☐ Acquitted ☐ On Lesser Offense(s)
☐ Dismissed ☐ WOP ☐ WP
☐ On Government's Motion

MAGISTRATE
INITIAL APPEARANCE DATE
PRELIMINARY EXAMINATION
HEARING
Tape Number

OUTCOME
☐ DISMISSED
HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

ATTORNEYS
Defense ☐ CJA ☒ Ret. ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ GD

U.S. Attorney or Asst.
Jeremy G. Epstein
791-0036

Ernest H. Hammer
120 Broadway
New York, N.Y. — 349-7380

* Show last names and suffix numbers of other defendants on same indictment/information.

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c) (d)
8-31-76		Filed indictment.	
9-9-76		Deft. (Atty. present) pleads not guilty. Deft R.O.R. and ordered F/P. Case assigned to Pollack, J... Haight, J.	
09-10-76		Filed notice of appearance of atty. E.H. Hammer.	
09-23-76		Pre-trial before Pollack, J.	
11-24-76		Deft. (atty. Ernest H. Hammer present) hearing held re: atty. presenting all three defts. Record ordered sealed by the Court. Pollack, J.	
11-30-76		Filed deft's affdvt. re: support of motion to quash subpoena duces tecum.	
11-29-76		Jury trial begun before Judge Pollack.	
11-30-76		Trial cont'd.	
12-1-76		Trial cont'd.	
12-2-76		Trial cont'd.	
12-3-76		Trial cont'd.	
12-4-76		Deft. found guilty on all 1, 2 & 3. Sent to prison for 12-8-76. Date of send. 1-17-76 at Pollack, J.	

2 10-28 E 1

A

BY PROCEEDINGS FOR

PAGE TWO

V. EXCLUDABLE DELAY

DATE OF DELAY
REASON FOR DELAY
DATE OF DELAY
REASON FOR DELAY

id \$15,000. Unsecured Personal Recognizance Bond.
 and one envelope ordered sealed. Pollack, J.
 Filed Judgment (atty. Ernest H. Hamner) Cts. 1,2,3:
 2 yrs. Impr. ea. ct. SERVE 3 mos. execution of
 the rem. order of the bal. of sent. suspended.
 18:36 1.2 yrs. prob. w/super. Deft. cont'd. on
 present bail until 1-24-77, etc. Pollack, J.
 issued all copies.

01-12-77

Filed notice of appeal from judgment of 1-17-77.
 Mailed copies

FINE AND RESTITUTION PAYMENTS

RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

RECEIVED
 U.S. DEPT. OF JUSTICE
 OFFICE OF THE ATTORNEY GENERAL
 DIVISION OF CRIMINAL JUSTICE
 NEW YORK, N.Y.
 JAN 24 1977
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2

United States of America vs.

United States District Court for

DEFENDANT

BARTHOLOMEW BUGHES

EAST SOUTHERN DISTRICT OF NEW YORK

DOCKET NO.

76 CR. 364 MP

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

J. Epstein, AUSA

MONTH DAY YEAR
JAN. 17, 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Ernest H. Hammer

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully, and knowingly would and did make and present and cause to be made and presented to the United States Department of Agriculture, a department and agency of the United States, claims upon and against the United States, to wit, Food and Nutrition Service Reimbursement Vouchers, knowing such claims to be false, fictitious, and fraudulent. (T. 18, U.S.C., Sections 287 and 2.); conspiracy so to do. (T. 18, U.S.C., Section 371.)

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO(2) YEARS on each of counts 1, 2 and 3 to run concurrently with each other, and on condition that defendant be confined in a JAIL TYPE institution for a period of THREE(3) MONTHS, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is placed on probation for a period of TWO(2) YEARS, subject to the standing probation order of this Court. Title 18, Section 3651, U.S. Code.

Defendant advised of his right to appeal.

SPECIAL
CONDITIONS
OF
PROBATION

Defendant is continued on present bail until January 24, 1977 at 10 A.M., at which time he is to surrender to the U.S. Marshal in Room 506 for service of sentence.

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

MICROFILM

JAN 19 1977

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

U.S. Magistrate

William Beeck

DISTRICT COURT
FILED
JAN 17 1977

FILE OF ENTRY

that the within is a (certified)

Office of the clerk of the within
19

Yours, etc.,

R & SPECTOR

Post Office Address

42nd Street

New York, N. Y. 10017

FILE OF SETTLEMENT

that an order

a true copy will be presented
for

of the within named Court, at

19

Yours, etc.,

R & SPECTOR

Post Office Address

42nd Street

New York, N. Y. 10017

Index No.

77-1249, 1252, 1253

Year 19

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

-against-

BARTHOLOMEW BUIGUES,

Defendant-Appellant.

AFFIRMATION

HAMMER & SPECTOR

Attorneys for Defendant-Appellant

Office and Post Office Address, Telephone

60 East 42nd Street

Borough of Manhattan New York, N. Y. 10017

(212) 637-5826

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

1500-JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS, N.Y.C. 10013

HAMMER & SPECTOR

COUNSELLORS AT LAW

60 EAST 42ND STREET SUITE 1136

NEW YORK, N. Y. 10017

ERNEST H. HAMMER

JAMES M. SPECTOR

TELEPHONE (212) 687-5626

September 12, 1977

Mr. Bartholomew Buigues
2176 Amsterdam Avenue
New York, New York 10032

Re: UNITED STATES v. Bartholomew Buigues
Docket No. 77-1249, 1252, 1253

Dear Mr. Buigues:

As you know, I am the attorney who was assigned to prepare your appeal. I regret to inform you that, after careful consideration of the record of the trial in your case, and after substantial research, I have been unable to find any non-frivolous issues to raise on appeal for the Court of Appeals' consideration. Accordingly, I have prepared a brief pursuant to Anders v. California, 386 U.S. 738 (1967), and a motion seeking to be relieved as your attorney. Copies are enclosed.

The motion is returnable on September 26, 1977. Prior to that time, you may write to the Court of Appeals asking (1) that my motion be denied, (2) that my motion be granted but other counsel assigned to represent you, or (3) that you be permitted to proceed pro se by filing a brief you prepare yourself. These options are available to you, and any response you wish to make to my motion should be sent to Mr. Fusaro, Clerk of the Court of Appeals, to the address on page 2 of the motion, well in advance of September 26, 1977. You should be aware, however, that assignment of other counsel is discretionary with the Court, which may or may not grant a request for other counsel.

In cases in which an Anders brief is filed the government usually seeks an affirmance of the conviction. If the government's motion for an affirmance is granted you then have the right to ask the Supreme Court to review your case. That document is called a petition for writ of certiorari. It must be received at the Supreme Court no later than 30 days after the Second Circuit affirms the appeal. Enclosed are instructions to assist you.

Alternatively, you can ask the judge who imposed the sentence upon you to reduce that sentence pursuant to F.R.Cr.P. 35. That motion must be made within 120 days of the Court of Appeals

HAMMER & SPECTOR

Mr. Bartholomew Buigues
2176 Amsterdam Avenue
New York, New York 10032

Re: UNITED STATES v. Bartholomew Buigues

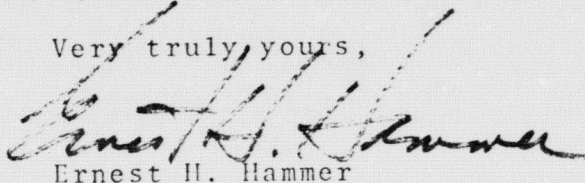
September 12, 1977

2

affirmance. However, if you ask the Supreme Court to review your case, you must wait until the conclusion of those proceedings to make your Rule 35 motion. I enclose instructions on making such a motion.

If you have any questions please write to me.

Very truly yours,



Ernest H. Hammer

EHH: mc
Enclosures

cc: Jeremiah Epstein
US Attorney's Office
St. Andrew's Plaza
New York, N.Y.